

Presentation to Water Resource Mitigation Task Force Initial “Lessons Learned”

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**We manage water resources to meet the needs
of people and the natural environment, in
partnership with Washington communities.**



Takeaway 1

Mitigation sequencing approach is problematic

- Avoiding impacts is not applicable
- Uncertainty around what is “reasonably attainable” – what is “good enough” before moving between tiers?
- No clear “cost-benefit” calculation for approach



Takeaway 2

Out-of-kind mitigation

- No consensus around which habitat model(s) are appropriate
- Need these models to determine “Net Ecological Benefits”
- Added uncertainty on effectiveness and longevity of projects



Takeaway 3

Use of hydrological models

- All models are abstractions, but they are not treated that way in case law
- *Postema* and *Foster* elevate potential impacts based on a hydrological model to “demonstration of proof”
- Need to address how to use and interpret model output that is within the model and measurement uncertainty



Moving forward

Creating requirements for new permit decisions based on existing rights

- Different situations would have to be fully addressed/thought through (e.g. ag user, municipal user, single right)
- We do not generally evaluate existing “portfolio” of rights in our decisions
- Would be a significant change to look at how existing rights are used/managed
- Changes to statute (e.g. increased conservation) that relate to new decisions should apply to the new water rights issued in those decisions



Out-of-kind mitigation

From our experience, use of out-of-kind mitigation as compensation for water right permit applications is extremely complex and subject to scrutiny because of uncertainty in:

- Measuring actual impacts
- Measuring benefits
- Longevity of projects



Final thought

The issues that have come up in the pilot projects have touched on many areas of water law:

- Trust water rights
- Municipal water rights
- Change statutes, Annual Consumptive Quantity (ACQ)
- Reclaimed water



Immense challenge to make a “Foster Pilot” decision that doesn’t interrelate with other parts of the water code



Thank you for your time!

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